

REMARKS

Claims 1, 5, 6, 11-36, 38-46, and 48-90 are pending in the present application.

At the outset, Applicants wish to thank Examiner George for the helpful and courteous discussion with their undersigned Representative on July 13, 2006. During this discussion various arguments in traverse of the outstanding rejections and data to demonstrate the differences between the art and the present invention were discussed. The content of this discussion is reflected in the following comments. Reconsideration of the outstanding rejections is requested.

The rejections of: (a) Claims 1-9, 11-14, 18, 19, 21-24, 26-28, 31, 32, 35, 36, 38, 40, and 41 under 35 U.S.C. §102(b), and (b) Claims 20 and 35 under 35 U.S.C. §103(a), each over Kropf et al is obviated by amendment.

At the outset, Applicants note that the independent claims of the present invention have amended to relate to a composition comprising superfine particles of a water extract of a mushroom, wherein the superfine particles have an average particle diameter of 10  $\mu\text{m}$  or less, as determined in the form of a dispersion in water (Claim 1) or a composition comprising superfine particles of a  $\beta$ -glucan derived from a mushroom (Claim 5).

Applicants submit that the only  $\beta$ -glucans disclosed or suggested by Kropf et al is yeast derived glucans. Applicants submit that Kropf et al does not disclose or suggest water extracts of mushroom or  $\beta$ -glucans derived from a mushroom. Therefore, Kropf et al cannot affect the patentability of the claimed invention.

Withdrawal of this ground of rejection is requested.

The rejection of: (a) Claim 1 under 35 U.S.C. §102(b), and (b) Claims 6-9, 26-36, 38, 42, 443, and 48-51 under 35 U.S.C. §103(a), each over Jamas et al is obviated by amendment.

As stated above, the independent claims of the present invention have amended to relate to a composition comprising superfine particles of a water extract of a mushroom, wherein the superfine particles have an average particle diameter of 10  $\mu\text{m}$  or less, as determined in the form of a dispersion in water (Claim 1) or a composition comprising superfine particles of a  $\beta$ -glucan derived from a mushroom (Claim 5).

As in the case of Kropf et al, Applicants submit that the only  $\beta$ -glucans disclosed or suggested by Jamas et al is yeast derived glucans. Applicants submit that Jamas et al does not disclose or suggest water extracts of mushroom or  $\beta$ -glucans derived from a mushroom. Therefore, Jamas et al cannot affect the patentability of the claimed invention.

Withdrawal of this ground of rejection is requested.

The rejection of Claims 1-4, 9, 10, 15-17, 27, 28, 36, 37, 42, and 44 under 35 U.S.C. §102(b) over Kobaysahi et al is obviated by amendment.

As recognized by the Examiner, Kobayashi et al disclose a cosmetic containing a mushroom extract where the extract is obtained by crushing the fruit body of a mushroom or solvent extraction of the residues. Further, as recognized by the Examiner, the average particle size of the extract is measured before dispersion as 0.05 – 0.5 mm (equivalent to 50-500  $\mu\text{m}$ ). The average particle size after dispersion is not disclosed by Kobayashi et al. However, the particle size after dispersion is expected to be larger than before dispersion because the extract is used for removing impurities and cuticles on the skin as a cosmetic.

In contrast, the superfine particles of the present invention permit the particles to be maintained in a small size without aggregation even after dispersion in water by a dispersant

(i.e., an emulsifier). Further, the superfine particles of the present invention are used for oral administration to exert their function as an immune activator. The distinct uses of the present invention and that of Kobayashi et al speak further to the divergence of the particle size of the extract and, for that matter, the novelty of the present invention.

Based on the foregoing, Applicants submit that Kobayashi et al fails to disclose or suggest a composition comprising superfine particles of a water extract of a mushroom, wherein the superfine particles have an average particle diameter of 10  $\mu\text{m}$  or less, as determined in the form of a dispersion in water (Claim 1) or a composition comprising superfine particles of a  $\beta$ -glucan derived from a mushroom (Claim 5). Therefore, Applicants submit that this ground of rejection is not tenable and should be withdrawn.

Withdrawal of this ground of rejection is requested.

The rejections under 35 U.S.C. §102(e) over Ostroff et al and Sandewicz et al are respectfully traversed on the grounds that this reference is not prior art against the present application.

The present application was filed on October 27, 2003, as a continuation of PCT/JP02/04205, filed on April 26, 2002, which claimed priority to JP 2001-132513 filed on April 27, 2001. Applicants note that the effective prior art date under 35 U.S.C. §102(e) for Ostroff et al is August 13, 2002 and for Sandewicz et al is September 17, 2001. Each of these dates is after the filing date of the priority date of the present application of April 27, 2001. To perfect their claims to foreign priority to JP 2001-132513, Applicants **submit herewith** certified English translation of JP 2001-132513. Applicants request that the Examiner acknowledge entitlement of the present application to the benefit of an earlier filing date provided by the claim to priority to JP 2001-132513, which is four and five

months prior to the effective filing date of Ostroff et al and Sandewicz et al, respectively.

Since Ostroff et al and Sandewicz et al are not prior art against the present claims this ground of rejection should be withdrawn.

Acknowledgement that this ground of rejection has been withdrawn is requested.

The rejection of Claim 22 under 35 U.S.C. §112, second paragraph, is obviated by amendment.

Applicants have deleted the objected to parenthetical from Claim 22. As such this ground of rejection is believed to be moot.

Withdrawal of this ground of rejection is requested.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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